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Contents

1. Courts backed presidents in past Antiquities Act disputes

Jennifer Yachnin, E&E News reporter Published: Friday, August 25, 2017

Opponents of Interior Secretary Ryan Zinke's review of national monuments are vowing to challenge the Trump administration in court if it attempts to roll back the boundaries of any site — setting up a legal fight over limits of the Antiquities Act of 1906.

http://bit.ly/2vdYMtm

2. Judge hands BLM mixed ruling on massive Nev. pipeline

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The Bureau of Land Management must go back and determine how the proponents of a 260-mile-long Nevada water pipeline project will compensate for expected damage to thousands of acres of wetlands and sensitive wildlife habitat, a federal judge in Nevada ruled this week.

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3. What's driving high break-even prices on public lands?

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Oil and gas producers might have a harder time breaking even in shale plays containing federally controlled land, but that may have little to do with the regulatory and permitting burdens associated with extracting hydrocarbons from public acreage, energy researchers say.

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Former Interior Secretary Cecil Andrus, who helped conserve millions of acres of Alaskan land under the Carter administration, has died at age 85.

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Contents

1. Courts backed presidents in past Antiquities Act disputes

Jennifer Yachnin, E&E News reporter Published: Friday, August 25, 2017

Opponents of Interior Secretary Ryan Zinke's review of national monuments are vowing to challenge the Trump administration in court if it attempts to roll back the boundaries of any site — setting up a legal fight over limits of the Antiquities Act of 1906.

The White House is considering a secret draft report — Zinke said yesterday that a "handful" of the 27 monuments he reviewed will be targeted for cuts, without offering specifics on the actual acreage or sites — but gave no indication on when or whether President Trump would act on his recommendations (***Greenwire***, Aug. 24).

In addition to a proposal Zinke floated earlier this year for shrinking the Bears Ears National Monument in southeastern Utah, *The Washington Post* reported yesterday that other cuts could be made at the Grand Staircase-Escalante National Monument in southwestern Utah and the Cascade-Siskiyou National Monument in Oregon and California.

Matt Lee-Ashley, the Center for American Progress' senior director of environmental strategy and communications, also asserted yesterday that the cuts would total "half or more of the total area" under review, without citing specific sources.

"What exactly constitutes the handful of changes that Secretary Zinke described?" Lee-Ashley said in a news conference. "I very much doubt that he's talking about a few little boundary changes here and there. Why on earth go to all this trouble or keep your recommendations secret if you're just going to tinker around the edges?"

He added that sites likely to be reduced include the Utah monuments as well as New Mexico's Organ Mountains-Desert Peaks and Rio Grande del Norte, Nevada's Basin and Range and Gold Butte, California's Mojave Trails and Castle Mountains, and the Northeast Canyons and Seamounts off Massachusetts' coast.

The Interior Department has rejected requests for comments on the report, referring inquiries to the White House press office.

Despite the fact that both Interior and the White House have referred to the report as a "draft" — and pointed to its status as the reasons it has not been made public — a White House official insisted that "no deadlines got pushed back."

In the executive order Trump issued in late April mandating the review of all monuments established since 1996 comprising more than 100,000 acres, the president set a 120-day deadline for a "final report" with recommendations for "presidential actions, legislative proposals or other actions consistent with law."

"We just decided that there are additional questions and issues that need to be answered and explored in greater detail," the White House official told E&E News, speaking on the condition of anonymity. The source declined to confirm reports of those monuments targeted for reductions.

The official added, "We want time to study the recommendations before releasing. We want to get this right."

Remember the Devils Hole pupfish?

But opponents of the monuments review — and any potential changes to existing sites — argue that only Congress has the authority to alter existing monuments.

That dispute is likely to set up a legal battle over the president's authority under the Antiquities Act, which allows the White House to designate monuments on federal lands with historic, scientific or cultural significance.

Although past presidents have adjusted the boundaries of monuments created by their predecessors, none has done so since President Kennedy altered the acreage of the Bandelier National Monument in New Mexico in 1963.

In the decades that followed, Congress created the Federal Land Policy and Management Act in 1976, and legal scholars assert that law has closed a loophole allowing such changes to be made by the chief executive.

Former Interior Deputy Solicitor for Land Resources Justin Pidot, who is now an associate professor at the University of Denver Sturm College of Law, notes that while the Antiquities Act has faced repeated legal scrutiny, the specific question of reductions or boundary changes has not.

"What authority does the president have to modify or diminish a monument has never been tested in court," Pidot said.

He noted that the prior reductions on federal lands were often done to correct mapping errors or issues with the administration of a monument.

"We're talking about monuments created between 1906 and 1939, a long time ago, using a lot less technology than we have now," Pidot said.

Nonetheless, conservationists and legal scholars say case law on the Antiquities Act itself suggests any challenges to existing monuments could face an uphill battle.

Pidot noted that federal courts have repeatedly affirmed the "very broad authority on the part of the president to identify a monument."

Although Congress may have intended the Antiquities Act to guard against "pot-hunters" or museums and researchers who were looting archaeological sites in the early 1900s, President Theodore Roosevelt opted to take a more expansive view of the law when he began designating the nation's first monuments (***Greenwire***, Aug. 11).

The Supreme Court confirmed Roosevelt's actions more than a decade later when it ruled in 1920 against an Arizona businessman and miner who asserted that the president had no authority to set aside the then-808,000-acre Grand Canyon National Monument.

"The defendants insist that the monument reserve should be disregarded on the ground that there was no authority for its creation. To this we cannot assent," Justice Willis Van Devanter wrote in *Cameron v. United States*.

He added, "The act under which the President proceeded empowered him to establish reserves embracing 'objects of historic or scientific interest.' The Grand Canyon, as stated in his proclamation, 'is an object of unusual scientific interest.'"

Decades later, the Supreme Court would once again defend the president's ability to designate more antiquities for protection, in the 1976 ruling in *Cappaert v. United States*.

The court dismissed arguments that President Hoover should not have been able to designate Devils Hole, a unit of what is now Death Valley National Park, under the Antiquities Act.

"Under that Act, according to the Cappaert petitioners, the President may reserve federal lands only to protect archeologic sites," Chief Justice Warren Burger wrote in the unanimous opinion. "However, the language of the Act, which authorizes the President to proclaim as national monuments 'historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government,' is not so limited."

He added of the endangered Devils Hole pupfish: "The pool in Devil's Hole and its rare inhabitants are 'objects of historic or scientific interest'" (***Greenwire***, June 9, 2014).

More recently, opponents of national monuments have challenged a host of designations made by President Clinton in his final days in office, including the Grand Staircase-Escalante monument.

"In both cases, they lost handily and the court found that the president had acted well within his authority to create those monuments," Pidot said.

In a 2004 ruling upholding Clinton's creation of the Utah monument, Utah District Judge Dee Benson said his court did not have the authority to review the use of the Antiquities Act.

"When the president is given such a broad grant of discretion as in the Antiquities Act, the courts have no authority to determine whether the president abused his discretion," Benson wrote at the time (***Land Letter***, April 22, 2004).

That case was filed by both the Mountain States Legal Foundation and the Utah Association of Counties.

Mountain States Legal Foundation and the BlueRibbon Coalition, an off-road vehicle users group, also lost a 2002 challenge against Clinton's monument designations in Washington, Oregon, Colorado and Arizona.

The U.S. Court of Appeals in Washington, D.C., turned back arguments that Clinton had exceeded his authority in designating those monuments.

"Nothing in the record before us indicates any infirmity in the challenged proclamations," the court decision stated. "Each proclamation identifies particular objects or sites of historic or scientific interest and recites grounds for the designation that comport with the Act's policies and requirements" (***Greenwire***, Oct. 21, 2002). Challenges are pending in federal court against two monuments created by President Obama, the Northeast Canyons and Seamounts monument and the Cascade-Siskiyou monument, but have been stayed pending the Trump administration's review (***E&E News PM***, May 12).

"We believe that there's no presidential authority to change a prior president's monument designations, either size or the other findings," the National Parks Conservation Association's vice president of general counsel, Libby Fayad, told E&E News. "We believe that we have constructed a good legal argument for that, and we expect to prevail."

Lawmakers, groups want report

In the meantime, members of Congress and outside groups are pushing the Trump administration to unveil the details of the report.

The Center for Biological Diversity filed a Freedom of Information Act request yesterday to force the disclosure of Zinke's recommendations.

"This entire review has been a lawless, secretive sham," CBD's public lands director, Randi Spivak, said in a statement. "Now Trump and Zinke are hiding the report so they don't have to face public backlash for trying to sell out America's public lands to fossil fuel development and logging. They're asking for a court battle. And they'll get one."

While some members of Congress, including Utah Sen. Orrin Hatch (R), have indicated they were briefed by Interior on the report, others, including Oregon Sens. Ron Wyden (D) and Jeff Merkley (D), as well as Oregon Gov. Kate Brown (D), said they had received no information.

A Hatch spokesman declined to provide details of the briefing, referring questions to Interior. "We want to respect that it's theirs to share," he said.

Nevada Rep. Dina Titus (D) announced yesterday that she will seek an amendment to the Interior appropriations bill to block the administration from making changes to national monuments.

"Whatever this secret report says, I am committed to defending these important places from the attacks of the Trump administration," she said.

http://bit.ly/2vdYMtm

2. Judge hands BLM mixed ruling on massive Nev. pipeline

Scott Streater, E&E News reporter
Published: Friday, August 25, 2017

The Bureau of Land Management must go back and determine how the proponents of a 260-mile-long Nevada water pipeline project will compensate for expected damage to thousands of acres of wetlands and sensitive wildlife habitat, a federal judge in Nevada ruled this week.

But U.S. District Judge Andrew Gordon's **ruling** rejected arguments from environmental groups, Native American tribes and local governments that the court should throw out BLM's 2013 record of decision approving a right of way grant for the first phase of the pipeline.

That's a victory for the Southern Nevada Water Authority, which says the $15 billion project that will pipe 27 billion gallons of groundwater a year from rural eastern Nevada to the growing Las Vegas metropolitan area is badly needed to address serious water shortfalls projected for southern Nevada in the coming decades.

"The Southern Nevada Water Authority is pleased that Judge Gordon rejected the vast majority of the plaintiffs' claims," SNWA, which intervened in the lawsuit on BLM's behalf, said in a statement.

The water utility said it is "confident BLM will properly address" the wetlands mitigation issue, as well as Gordon's directive that BLM clarify that the project complies with habitat mitigation provisions in the resource management plan for BLM's Ely district.

"The U.S. District Court ruled that the BLM appropriately phased the EIS analysis and evaluated cumulative environmental and climate change impacts, and considered cultural resources and tribal water rights" in the environmental impact statement (EIS) it conducted, the SNWA statement says.

But opponents of the project, who in 2014 filed lawsuits that have been consolidated in Gordon's court, say they're pleased the judge agreed that the issue of compensation for wetlands destruction will be addressed.

"This is a win for wildlife and fragile habitat across eastern Nevada," Marc Fink, a senior attorney at the Center for Biological Diversity, said in a statement. "The federal government has to go back to the drawing board and try to come up with some plan to compensate for the massive environmental damage that would be caused by draining these ancient aquifers."

Gordon's ruling is the latest in a more than decadelong effort to build the massive underground water pipeline, which is expected to take 38 years to build.

The controversial project has drawn opposition over the years from a wide array of groups, including the Church of Jesus Christ of Latter-day Saints and several Native American tribes.

Critics' main concern is the environmental consequence of pumping such a large volume of groundwater from four Nevada valleys. CBD and numerous other groups say that the pipeline, if put into operation, will dry up wetlands and springs, damaging in the process thousands of acres of wildlife habitat and potentially creating a "dust bowl" scenario.

CBD says the project would dry up and significantly harm more than 200 square miles of habitat for greater sage grouse, mule deer, elk and pronghorn, including portions of the Pahranagat, Moapa Valley and Desert national wildlife refuges, as well as the Great Basin National Park and the Basin and Range National Monument.

More than 5,500 acres of meadows, 200 springs and 33 miles of trout streams would be harmed as water tables across the region would be lowered up to 200 feet, CBD says.

But BLM spent seven years evaluating the project, and Gordon said the analysis met National Environmental Policy Act requirements.

As for mitigation, BLM had argued that it did not need to determine mitigation for the wetlands damage, since SNWA had not yet applied for a Clean Water Act permit, and thus the Army Corps of Engineers has yet to even consider "what compensatory mitigation it would require," according to the ruling.

"But just because BLM is uncertain about the precise compensation the Corps will require does not mean that the agency can entirely ignore its responsibility to analyze whether alternatives 'will or will not achieve the requirements of' the CWA," Gordon wrote.

"It was therefore unreasonable for BLM to embark on this project without determining, at least in broad strokes, how SNWA would replace or restore wetlands impacted by the project (or even whether compensating for thousands of acres of destroyed wetlands is possible in the first place)," he added.

http://bit.ly/2vogfvj

3. What's driving high break-even prices on public lands?

Pamela King, E&E News reporter
Published: Friday, August 25, 2017

Oil and gas producers might have a harder time breaking even in shale plays containing federally controlled land, but that may have little to do with the regulatory and permitting burdens associated with extracting hydrocarbons from public acreage, energy researchers say.

In the oil and gas sphere, a break-even price refers to the sum of money an operator must collect in order to recoup production costs. The calculation — a critical consideration in nearly any business transaction — helps extraction firms decide whether to sink a well in the first place.

Generally speaking, break-even prices should be lower than the price of a barrel of oil in order to spur industry interest.

"For the most part, Lower 48 production comes from private fee lands. On public lands, activity has not been as high," said Clay Lightfoot, upstream research manager at Wood Mackenzie. "You could argue that's because of the federal permitting process, but I don't think that's really the case."

The Permian Basin is an interesting case study, he said. With the price of a barrel of West Texas Intermediate crude sitting at $47.59 yesterday, Texas's share of the Permian resource is currently one of the few places the shale industry can comfortably produce.

Across the New Mexico border, break-even prices are about $25 per barrel higher, according to data collected and compiled by Rystad Energy.

Because the Permian's lobes are spread across two states with dramatically different land ownership — public lands in New Mexico versus private tracts in Texas — it's easy to conclude that additional federal requirements on production in the Land of Enchantment may have dampened the possibility of a boom on the magnitude of what Texas has experienced, Lightfoot said.

Anecdotally, that has been the experience of members of the Western Energy Alliance, said Kathleen Sgamma, president of the trade group.

"The fact that public lands take years longer to develop than adjacent private and state lands means that they're inherently more expensive to operate on," she said. "Tying up capital for a long time reduces return, and then there's the additional cost of regulatory red tape."

But there are trade-offs to setting up shop on public lands, Lightfoot said.

"On the flip side, you see that the royalty rate is a bit lighter on the New Mexico side," he said. "We've seen more operators go there recently."

The federal government charges a 12.5 percent royalty rate for oil and gas produced on its onshore properties. Although private royalty data are fuzzy due to proprietary restrictions on contracts, Texas has been **known** to charge as much as 25 percent.

Balancing a lower federal royalty rate with the burden of complying with an extra layer of federal regulations "becomes an individual company strategy," Lightfoot said.

In fact, many energy data services do not compile break-even prices across entire formations because the economics can vary greatly from operator to operator.

"Each company has its own 'break-evens' based on the costs of entry, etc., so it is more of a company-by-company conversion," IHS Markit spokeswoman Melissa Manning wrote in an email.

Consultancies like Rystad and Drillinginfo Inc. do calculate break-evens by region, but experts who track those numbers were skeptical that public lands policies had much to do with driving up production costs on federal acreage.

Compliance with federal requirements has "very limited impact on break-even prices," Espen Erlingsen, a partner at Rystad, wrote in an email. "It is a combination of well productivity and the costs for new wells that causes the break-even price for these regions to be higher than the average."

A tougher regulatory environment in and of itself is unlikely to deter operators from doing business in regions with higher break-evens, he added.

"We think it is the well performance that makes these areas less attractive compared to other shale plays," Erlingsen said.

Drilling in the Rockies

[+] Break even prices are generally higher in regions with public lands, but that could be due to tough geology and poor well performance, experts suggest. The price of a barrel of West Texas Intermediate crude was $47.59 yesterday, generally rendering production in many Western locations uneconomical. Map: Claudine Hellmuth/E&E News; Data: Rystad Energy UCube, Government Accountability Office

Across the board, Rystad expects average break-even prices to increase by up to 7 percent this year.

"The reason why we expect to see a higher wellhead break-even price this year is a combination of various factors, especially increased costs from the oil field service companies, as well as so-called 'reversed high-

grading,' a situation where companies are no longer running only the best rigs in their best acreage," said Sona Mlada, a senior analyst at Rystad.

Parcels in the Piceance Basin may not be among the most appealing places for energy firms to conduct business, said Jason Slingsby, an analyst for the energy advisory BTU Analytics. The western Colorado play abuts the Greater Green River Basin, where break-even prices recently hovered around $92.71 — among the highest calculated by Rystad.

Geology is a huge factor in determining break-even prices, and the Rocky Mountains — which cut through public lands in Wyoming, Colorado and other states — shape a historically difficult terrain, he said.

The Piceance is currently populated by smaller private firms that have acquired assets from large public companies, Slingsby said. Because smaller companies tend to run less efficiently, that can lead to higher break-even prices in the plays where they operate.

One upside of hosting private or pure-play operators is that those firms tend to stay faithful to their sweet spots — even if the economics aren't ideal, Slingsby said. Larger, diversified firms have better options elsewhere, he said.

"If I'm a big operator with strong assets in Texas's Delaware Basin, I might need to focus on those and sell off some of my underperforming assets," he said.

That assessment rings true for the Western Energy Alliance membership, Sgamma said.

"I have many members that avoid public lands at all costs," she said. "There are companies that are dedicated to a play — they might have assets only in the Piceance, so they remain committed.

"But in general, companies and investors are avoiding public lands if they can go somewhere else."

http://bit.ly/2wElaML

4. Permian boom reinforces Texas' 'energy dominance' report

Nathanial Gronewold, E&E News reporter
Published: Friday, August 25, 2017

HOUSTON — The United States will be a net energy exporter in less than a decade, and Texas will dominate that trend.

That's the message delivered in a new industry report by the Texas Oil & Gas Association (TXOGA), which represents the state's upstream oil and gas companies and lobbies on their behalf in Austin.

TXOGA President Todd Staples told reporters during a call that the Permian Basin is far and away leading Texas' oil and gas surge, which is showing surprising strength even with weak natural gas prices and crude oil prices less than half what they were a few years ago. He said this state's oil and gas industry is demonstrating "impressive job growth" and boasting statistics that underlie how Texas is at the leading edge of North American energy production.

"Our nation's leaders have made energy dominance a priority, and we know there's been a flurry of activity in the oil and gas sector as prices have readjusted," Staples said. "We commissioned this report to demonstrate even with the realignment in the industry how oil and natural gas investment and activity in Texas is helping to make America more energy secure than ever."

Figures compiled by TXOGA show that the Permian Basin alone attracted 41 percent of all merger and acquisition dollars last year, some $25.6 billion. Roughly half of all active onshore oil rigs are drilling in the Permian. TXOGA reports that some 45 percent of all U.S. onshore crude oil production is now originating from the Permian Basin, which also extends into portions of southeastern New Mexico. Factoring in offshore oil production, the Permian may account for nearly one-third of U.S. crude output by some estimates.

And though the Port of Houston garners attention for its rising energy exports, TXOGA says it's actually the Port of Corpus Christi that has emerged as the nation's largest oil exporting port. The association reported that some 30 percent of the nation's crude exports are shipping from Corpus Christi.

Citing data from the Texas Workforce Commission, Staples said the recent surge in jobs growth in oil and gas underscores just how quickly the industry is recovering from the oil price crash. Nearly 5,000 jobs were added to the industry in June, he said, "the highest monthly gain in at least five years," according to the new report. TXOGA believes more than 300,000 jobs in the state are directly involved in the oil and gas extraction business.

Weak commodity prices don't seem to be slowing the industry down, Staples argued. "The 'lower for longer' I think is the new reality that we've had to live with for the past couple or three years now, and I think you've seen amazing capabilities of the industry to drive down costs," he said. "Part of that has been done through efficiencies, part of it's been done through innovation and technology."

Click here to read the TXOGA report, "U.S. Energy Dominance Starts in Texas."

http://bit.ly/2wF0vIN

5. Former Interior Secretary Cecil Andrus dies at 85

Published: Friday, August 25, 2017

Former Interior Secretary Cecil Andrus, who helped conserve millions of acres of Alaskan land under the Carter administration, has died at age 85.

Andrus resigned from his second term as Idaho governor in 1977 to serve as secretary of the Interior until Carter's term ended in 1981.

He then served as Idaho's governor two more times, setting a record as Idaho's first four-term governor. He was the last Democrat to hold the office.

Andrus once said that being Idaho's governor was "the best political job in the world."

In 1978, he announced permanent national monuments on over 50 million acres in Alaska.

That same year, he ordered an additional 52 million Alaskan acres to be protected despite criticism from residents. A popular bumper sticker at the time read, "Lock up Andrus, not Alaska."

Andrus died Wednesday night of complications due to lung cancer, according to his daughter (**AP/*Los Angeles Times***, Aug. 25). **— CS**

http://bit.ly/2xzTZz4